

IP 00-0097-CR 1 H/F US v Jones
Magistrate Kennard P. Foster

Signed on 5/23/05

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES OF AMERICA,

Plaintiff,

VS.

FOSTER JONES,

Defendant.

Cause No. IP 00-97-CR-01 (H/F)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	Cause No. IP 00-97-CR-01 (H/F)
)	
FOSTER JONES,)	
)	
Defendant.)	

MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION

This matter is before the undersigned U. S. Magistrate Judge pursuant to the Order entered by the Honorable David F. Hamilton, Judge, on March 4, 1005, designating this Magistrate Judge to conduct a hearing on the Petition for Summons or Warrant for Offender Under Supervision filed with the Court on March 3, 2005, and to submit to Judge Hamilton proposed Findings of Facts and Recommendations for disposition under Title 18 U.S.C. §§3401(i) and 3583(e). All proceedings in this matter were held on March 18, 2005 pursuant to Title 18 U.S.C. §3583, and Rule 32.1(a)(1) of the *Federal Rules of Criminal Procedure*. The government appeared by Winfield Ong, Assistant United States Attorney. The defendant appeared in person with his appointed counsel, Victoria Bailey. Mike Kendall, U. S. Parole and Probation officer, appeared and participated in the proceedings.

The Court conducted the following procedures in accordance with Rule 32.1(a)(1) *Federal Rules of Criminal Procedure* and Title 18 U.S.C. §3583:

1. That Victoria Bailey, the Indiana Federal Community Defender, appointed counsel, was present to represent Mr. Jones in regard to the pending Petition for Revocation of Supervised Release.

2. A copy of the Petition for Revocation of Supervised Release was provided to Mr. Jones and his counsel who informed the Court that they had read and understood the specification of the alleged violation and waived further reading thereof.

3. Mr. Jones was advised of his right to a preliminary hearing and its purpose in regard to the alleged specified violation of his supervised release contained in the pending Petition.

4. Mr. Jones would have a right to question witnesses against him at the preliminary hearing unless the Court, for good cause shown, found that justice did not require the appearance of a witness or witnesses.

5. Mr. Jones had the opportunity to appear at the preliminary hearing and present evidence on his own behalf.

6. If the preliminary hearing resulted in a finding of probable cause that Mr. Jones had violated the alleged condition or conditions of supervised release set forth in the Petition, he would be held for a revocation hearing before the undersigned Magistrate Judge, in accordance with Judge Hamilton's designation entered on March 4, 2005.

7. Mr. Jones stated his readiness to waive the preliminary hearing. Mr. Jones then waived, in writing, the preliminary hearing and he was held to answer.

8. Mr. Jones, by counsel, stipulated that he committed the specified violations of his supervised release set forth in the Petition for Warrant or Summons for an Offender Under Supervision, filed March 4, 2005, described as follows:

<u>Violation Number</u>	<u>Nature of Noncompliance</u>
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“The defendant shall refrain from any unlawful use of a controlled substance.”

Mr. Jones submitted urine drops on March 30, 2004 and April 5, 2004, both of which tested positive for cocaine. He admitted to this officer to using cocaine. On January 12, 2005, Mr. Jones submitted a urine sample which tested positive for cocaine. He admitted to this officer of using cocaine. On January 27 and 31, 2005, Mr. Jones submitted urine samples which tested positive for THC. Mr. Jones admitted to this officer that he used marijuana. On February 13, 2005 Mr. Jones submitted a urine sample which tested positive for THC.

Counsel for the parties further stipulated the following:

- 1) Mr. Jones has a relevant criminal history category of VI. *See*, U.S.S.G. §7B1.4(a).
- 2) The most serious grade of violation committed by Mr. Jones constitutes a Grade B violation, pursuant to U.S.S.G. §7B1.1(b).
- 3) Pursuant to U.S.S.G. §7B1.4(a) upon revocation of supervised release the range of imprisonment applicable to Mr. Jones is 21 to 24 months.
- 4) The appropriate disposition for Mr. Jones’s violation of the conditions of supervised release is 21 months’ confinement in the custody of the Attorney General, with no supervised release to follow.
- 5) Mr. Jones would remain upon the current conditions of supervised release and he would be allowed to self-surrender to the custody of the Attorney General, upon designation of the place of imprisonment.

9. The Court then placed Mr. Jones under oath and inquired directly of him whether he admitted committing violation of supervised release contained in the Petition to Revoke Supervised Release. Mr. Jones admitted the violation.

The Court, having heard the admission of the defendant, the stipulations of the parties, and the arguments and discussions on behalf of each party, **NOW FINDS** that the defendant, Foster

Jones, violated the above-delineated conditions of his supervised release. The defendant's supervised release is therefore **REVOKED**, and Foster Jones is sentenced to the custody of the Attorney General or his designee for a period of 21 months, with no supervised release to follow. The defendant will self-surrender upon designation of the place of imprisonment.

The Magistrate Judge requests that Mr. Kendall, U. S. Parole and Probation officer, prepare for submission to the Honorable David F. Hamilton, as soon as practicable, a supervised release revocation judgment, in accordance with these findings of facts, conclusions of law and recommendation.

You are hereby notified that the District Judge may reconsider any matter assigned to a Magistrate Judge pursuant to Title 28, U.S.C. §636(b)(1)(B) and (C) and Rule 72(b) of the *Federal Rules of Civil Procedure*. You shall have within ten days after being served with a copy of this Report and Recommendation to serve and file written objections to the proposed findings of facts and conclusions of law and recommendations of this Magistrate Judge. If written objections to the Magistrate Judge's proposed findings of facts and recommendations are made, the District Judge will make a *de novo* determination of those portions of the Report or specified proposed findings or recommendations to which an objection is made.

WHEREFORE, the U. S. Magistrate Judge **RECOMMENDS** the Court adopt the above recommendation revoking Mr. Jones's supervised release and the sentence imposed of imprisonment of 21 months in the custody of the Attorney General or his designee. The defendant will self-surrender upon designation by the Bureau of Prisons of the place of incarceration. After Mr. Jones's release from confinement, he shall not be subject to supervised release.

IT IS SO RECOMMENDED this 24th day of March, 2005.

Kennard P. Foster, Magistrate Judge
United States District Court
Southern District of Indiana

Distribution:

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U. S. Parole and Probation

U. S. Marshal